

108TH CONGRESS
1ST SESSION

S. 519

To establish a Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To establish a Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Native American Capital Formation and Economic De-
6 velopment Act of 2003”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. Definitions.

TITLE I—NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION

- Sec. 101. Establishment of the Corporation.
- Sec. 102. Authorized assistance and service functions.
- Sec. 103. Native American lending services grant.
- Sec. 104. Audits.
- Sec. 105. Annual housing and economic development reports.
- Sec. 106. Advisory Council.

TITLE II—CAPITALIZATION OF CORPORATION

- Sec. 201. Capitalization of the Corporation.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

- Sec. 301. Regulation, examination, and reports.
- Sec. 302. Authority of the Secretary of Housing and Urban Development.

TITLE IV—FORMATION OF NEW CORPORATION

- Sec. 401. Formation of new corporation.
- Sec. 402. Adoption and approval of merger plan.
- Sec. 403. Consummation of merger.
- Sec. 404. Transition.
- Sec. 405. Effect of merger.

TITLE V—OTHER NATIVE AMERICAN FUNDS

- Sec. 501. Native American Economies Diagnostic Studies Fund.
- Sec. 502. Native American Economic Incubation Center Fund.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

- Sec. 601. Native American financial institutions.
- Sec. 602. Corporation.
- Sec. 603. Other Native American funds.

1 SEC. 2. FINDINGS.

2 Congress finds that—

- 3 (1) there is a special legal and political relation-
- 4 ship between the United States and the Indian
- 5 tribes, as grounded in treaties, the Constitution,
- 6 Federal statutes and court decisions, executive or-
- 7 ders, and course of dealing;

1 (2) despite the availability of abundant natural
2 resources on Indian land and a rich cultural legacy
3 that accords great value to self-determination, self-
4 reliance, and independence, Native Americans suffer
5 rates of unemployment, poverty, poor health, sub-
6 standard housing, and associated social ills to a
7 greater degree than any other group in the United
8 States;

9 (3) the economic success and material well-
10 being of Native Americans depends on the combined
11 efforts and resources of the United States, Indian
12 tribal governments, the private sector, and individ-
13 uals;

14 (4) the poor performance of moribund Indian
15 economies is due in part to the near-complete ab-
16 sence of private capital and private capital institu-
17 tions; and

18 (5) the goals of economic self-sufficiency and
19 political self-determination for Native Americans can
20 best be achieved by making available the resources
21 and discipline of the private market, adequate cap-
22 ital, and technical expertise.

23 **SEC. 3. PURPOSES.**

24 The purposes of this Act are—

(1) to establish an entity dedicated to capital development and economic growth policies in Native American communities;

(2) to provide the necessary resources of the United States, Native Americans, and the private sector on endemic problems such as fractionated and unproductive Indian land;

(3) to provide a center for economic development policy and analysis with particular emphasis on diagnosing the systemic weaknesses with, and inhibitors to greater levels of investment in, Native American economies;

(4) to establish a Native-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans; and

(5) to improve the material standard of living of Native Americans.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ALASKA NATIVE.**—The term “Alaska Native” has the meaning given the term “Native” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) **BOARD.**—The term “Board” means the Board of Directors of the Corporation.

1 (3) CAPITAL DISTRIBUTION.—The term “cap-
 2 ital distribution” has the meaning given the term in
 3 section 1303 of the Federal Housing Enterprise Fi-
 4 nancial Safety and Soundness Act of 1992 (12
 5 U.S.C. 4502).

6 (4) CHAIRPERSON.—The term “Chairperson”
 7 means the chairperson of the Board.

8 (5) CORPORATION.—The term “Corporation”
 9 means the Native American Capital Development
 10 Corporation established by section 101(a)(1)(A).

11 (6) COUNCIL.—The term “Council” means the
 12 Advisory Council established under section 106(a).

13 (7) DESIGNATED MERGER DATE.—The term
 14 “designated merger date” means the specific cal-
 15 endar date and time of day designated by the Board
 16 under this Act.

17 (8) DEPARTMENT OF HAWAIIAN HOME
 18 LANDS.—The term “Department of Hawaiian Home
 19 Lands” means the agency that is responsible for the
 20 administration of the Hawaiian Homes Commission
 21 Act, 1920 (42 Stat. 108 et seq.).

22 (9) FUND.—The term “Fund” means the Com-
 23 munity Development Financial Institutions Fund es-
 24 tablished under section 104 of the Riegle Commu-

nity Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703).

(10) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(11) MERGER PLAN.—The term “merger plan” means the plan of merger adopted by the Board under this Act.

(12) NATIVE AMERICAN.—The term “Native American” means—

(A) a member of an Indian tribe; or

(B) a Native Hawaiian.

(13) NATIVE AMERICAN FINANCIAL INSTITUTION.—The term “Native American financial institution” means a person (other than an individual) that—

(A) qualifies as a community development financial institution under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702);

(B) satisfies—

(i) requirements established by subtitle A of title I of the Riegle Community

1 Development and Regulatory Improvement
 2 Act of 1994 (12 U.S.C. 4701 et seq.); and

3 (ii) requirements applicable to persons
 4 seeking assistance from the Fund;

5 (C) demonstrates a special interest and ex-
 6 pertise in serving the primary economic develop-
 7 ment and mortgage lending needs of the Native
 8 American community; and

9 (D) demonstrates that the person has the
 10 endorsement of the Native American commu-
 11 nity that the person intends to serve.

12 (14) NATIVE AMERICAN LENDER.—The term
 13 “Native American lender” means a Native American
 14 governing body, Native American housing authority,
 15 or other Native American financial institution that
 16 acts as a primary mortgage or economic develop-
 17 ment lender in a Native American community.

18 (15) NATIVE HAWAIIAN.—The term “Native
 19 Hawaiian” has the meaning given the term in sec-
 20 tion 201 of the Hawaiian Homes Commission Act,
 21 1920 (42 Stat. 108).

22 (16) NEW CORPORATION.—The term “new cor-
 23 poration” means the corporation formed in accord-
 24 ance with title IV.

1 (17) SECRETARY.—The term “Secretary”
 2 means the Secretary of Housing and Urban Develop-
 3 ment.

4 (18) TOTAL CAPITAL.—The term “total cap-
 5 ital” has the meaning given the term in section 1303
 6 of the Federal Housing Enterprise Financial Safety
 7 and Soundness Act of 1992 (12 U.S.C. 4502).

8 (19) TRANSITION PERIOD.—The term “transi-
 9 tion period” means the period beginning on the date
 10 on which the merger plan is approved by the Sec-
 11 retary and ending on the designated merger date.

12 **TITLE I—NATIVE AMERICAN**
 13 **CAPITAL DEVELOPMENT COR-**
 14 **PORATION**

15 **SEC. 101. ESTABLISHMENT OF THE CORPORATION.**

16 (a) ESTABLISHMENT; BOARD OF DIRECTORS; POLI-
 17 CIES; PRINCIPAL OFFICE; MEMBERSHIP; VACANCIES.—

18 (1) ESTABLISHMENT.—

19 (A) IN GENERAL.—There is established
 20 and chartered a corporation, to be known as the
 21 “Native American Capital Development Cor-
 22 poration”.

23 (B) PERIOD OF TIME.—The Corporation
 24 shall be a congressionally chartered body cor-
 25 porate until the earlier of—

- 1 (i) the designated merger date; or
2 (ii) the date on which the charter is
3 surrendered by the Corporation.

4 (C) CHANGES TO CHARTER.—The right to
5 revise, amend, or modify the Corporation char-
6 ter is specifically and exclusively reserved to
7 Congress.

8 (2) BOARD OF DIRECTORS; PRINCIPAL OF-
9 FICE.—

10 (A) BOARD.—The powers of the Corpora-
11 tion shall be vested in a Board of Directors,
12 which Board shall determine the policies that
13 govern the operations and management of the
14 Corporation.

15 (B) PRINCIPAL OFFICE; RESIDENCY.—

16 (i) PRINCIPAL OFFICE.—The principal
17 office of the Corporation shall be in the
18 District of Columbia.

19 (ii) VENUE.—For purposes of venue,
20 the Corporation shall be considered to be a
21 resident of the District of Columbia.

22 (3) MEMBERSHIP.—

23 (A) IN GENERAL.—

1 (i) NINE MEMBERS.—Except as pro-
2 vided in clause (ii), the Board shall consist
3 of 9 members, of which—

4 (I) 3 members shall be appointed
5 by the President; and

6 (II) 6 members shall be elected
7 by the class A stockholders, in accord-
8 ance with the bylaws of the Corpora-
9 tion.

10 (ii) THIRTEEN MEMBERS.—If class B
11 stock is issued under section 201(b), the
12 Board shall consist of 13 members, of
13 which—

14 (I) 9 members shall be appointed
15 and elected in accordance with clause
16 (i); and

17 (II) 4 members shall be elected
18 by the class B stockholders, in accord-
19 ance with the bylaws of the Corpora-
20 tion.

21 (B) TERMS.—Each member of the Board
22 shall be elected or appointed for a 4-year term,
23 except that the members of the initial Board
24 shall be elected or appointed for the following
25 terms:

1 (i) Of the 3 members appointed by
2 the President—

3 (I) 1 member shall be appointed
4 for a 2-year term;

5 (II) 1 member shall be appointed
6 for a 3-year term; and

7 (III) 1 member shall be ap-
8 pointed for a 4-year term;
9 as designated by the President at the time
10 of the appointments.

11 (ii) Of the 6 members elected by the
12 class A stockholders—

13 (I) 2 members shall each be
14 elected for a 2-year term;

15 (II) 2 members shall each be
16 elected for a 3-year term; and

17 (III) 2 members shall each be
18 elected for a 4-year term.

19 (iii) If class B stock is issued and 4
20 additional members are elected by the class
21 B stockholders—

22 (I) 1 member shall be elected for
23 a 2-year term;

24 (II) 1 member shall be elected
25 for a 3-year term; and

1 (III) 2 members shall each be
2 elected for a 4-year term.

3 (C) QUALIFICATIONS.—Each member ap-
4 pointed by the President shall have expertise in
5 1 or more of the following areas:

6 (i) Native American housing and eco-
7 nomic development matters.

8 (ii) Financing in Native American
9 communities.

10 (iii) Native American governing bod-
11 ies, legal infrastructure, and judicial sys-
12 tems.

13 (iv) Restricted and trust land issues,
14 economic development, and small consumer
15 loans.

16 (D) MEMBERS OF INDIAN TRIBES.—Not
17 less than 2 of the members appointed by the
18 President shall be members of different, feder-
19 ally-recognized Indian tribes enrolled in accord-
20 ance with the applicable requirements of the In-
21 dian tribes.

22 (E) CHAIRPERSON.—The Board shall se-
23 lect a Chairperson from among the members of
24 the Board, except that the initial Chairperson
25 shall be selected from among the members of

1 the initial Board who have been appointed or
 2 elected to serve for a 4-year term.

3 (F) VACANCIES.—

4 (i) APPOINTED MEMBERS.—Any va-
 5 cancy in the appointed membership of the
 6 Board shall be filled by appointment by the
 7 President, but only for the unexpired por-
 8 tion of the term.

9 (ii) ELECTED MEMBERS.—Any va-
 10 cancy in the elected membership of the
 11 Board shall be filled by appointment by the
 12 Board, but only for the unexpired portion
 13 of the term.

14 (G) TRANSITIONS.—Any member of the
 15 Board may continue to serve after the expira-
 16 tion of the term for which the member was ap-
 17 pointed or elected until a qualified successor
 18 has been appointed or elected.

19 (b) POWERS OF THE CORPORATION.—The Corpora-
 20 tion—

21 (1) shall adopt bylaws, consistent with this Act,
 22 regulating, among other things, the manner in
 23 which—

24 (A) the business of the Corporation shall
 25 be conducted;

1 (B) the elected members of the Board shall
2 be elected;

3 (C) the stock of the Corporation shall be
4 issued, held, and disposed of;

5 (D) the property of the Corporation shall
6 be disposed of; and

7 (E) the powers and privileges granted to
8 the Corporation by this Act and other law shall
9 be exercised;

10 (2) may make and execute contracts, agree-
11 ments, and commitments, including entering into a
12 cooperative agreement with the Secretary;

13 (3) may prescribe and impose fees and charges
14 for services provided by the Corporation;

15 (4) may, if a settlement, adjustment, com-
16 promise, release, or waiver of a claim, demand, or
17 right of, by, or against the Corporation, is not ad-
18 verse to the interests of the United States—

19 (A) settle, adjust, and compromise on the
20 claim, demand, or right; and

21 (B) with or without consideration or ben-
22 efit to the Corporation, release or waive, in
23 whole or in part, in advance or otherwise, the
24 claim, demand, or right;

1 (5) may sue and be sued, complain and defend,
2 in any Federal, State, tribal, or other court;

3 (6) may acquire, take, hold, and own, manage,
4 and dispose of any property;

5 (7) may—

6 (A) determine the necessary expenditures
7 of the Corporation and the manner in which
8 those expenditures shall be incurred, allowed,
9 and paid; and

10 (B) appoint, employ, and fix and provide
11 for the compensation and benefits of such offi-
12 cers, employees, attorneys, and agents as the
13 Board determines reasonable and not incon-
14 sistent with this section;

15 (8) may incorporate a new corporation under
16 State, District of Columbia, or tribal law, as pro-
17 vided in this Act;

18 (9) may adopt a plan of merger, as provided in
19 this Act;

20 (10) may consummate the merger of the Cor-
21 poration into the new corporation, as provided in
22 this Act; and

23 (11) may have succession until the designated
24 merger date or any earlier date on which the Cor-

1 poration surrenders the Federal charter of the Cor-
 2 poration.

3 (c) INVESTMENT OF FUNDS; DESIGNATION AS DE-
 4 POSITARY, CUSTODIAN, OR AGENT.—

5 (1) INVESTMENT OF FUNDS.—Funds of the
 6 Corporation that are not required to meet current
 7 operating expenses shall be invested in—

8 (A) obligations of, or obligations guaran-
 9 teed by, the United States (or any agency of
 10 the United States); or

11 (B) in obligations, participations, or other
 12 instruments that are lawful investments for fi-
 13 duciary, trust, or public funds.

14 (2) DESIGNATION AS DEPOSITARY, CUSTODIAN,
 15 OR AGENT.—Any Federal Reserve bank or Federal
 16 home loan bank, or any bank as to which at the time
 17 of its designation by the Corporation there is out-
 18 standing a designation by the Secretary of the
 19 Treasury as a general or other depository of public
 20 money, may—

21 (A) be designated by the Corporation as a
 22 depository or custodian or as a fiscal or other
 23 agent of the Corporation; and

24 (B) act as such a depository, custodian, or
 25 agent.

1 (d) ACTIONS BY AND AGAINST THE CORPORATION.—

2 Notwithstanding section 1349 of title 28, United States
3 Code, or any other provision of law—

4 (1) the Corporation shall be deemed to be an
5 agency covered under sections 1345 and 1442 of
6 title 28, United States Code;

7 (2) any civil action to which the Corporation is
8 a party shall be deemed to arise under the laws of
9 the United States, and the appropriate district court
10 of the United States shall have original jurisdiction
11 over any such action, without regard to amount or
12 value; and

13 (3) in any case in which all remedies have been
14 exhausted in accordance with the applicable ordi-
15 nances of an Indian tribe, in any civil or other ac-
16 tion, case, or controversy in a tribal court, State
17 court, or in any court other than a district court of
18 the United States, to which the Corporation is a
19 party, may at any time before the commencement of
20 the civil action be removed by the Corporation, with-
21 out the giving of any bond or security and by fol-
22 lowing any procedure for removal of causes in effect
23 at the time of the removal—

1 (A) to the district court of the United
2 States for the district and division in which the
3 action is pending; or

4 (B) if there is no such district court, to the
5 United States District Court for the District of
6 Columbia.

7 **SEC. 102. AUTHORIZED ASSISTANCE AND SERVICE FUNC-**
8 **TIONS.**

9 The Corporation may—

10 (1) assist in the planning, establishment, and
11 organization of Native American financial institu-
12 tions;

13 (2) develop and provide financial expertise and
14 technical assistance to Native American financial in-
15 stitutions, including methods of underwriting, secur-
16 ing, servicing, packaging, and selling mortgage and
17 small commercial and consumer loans;

18 (3) develop and provide specialized technical as-
19 sistance on overcoming barriers to primary mortgage
20 lending on Native American land, including issues
21 relating to—

22 (A) trust land;

23 (B) discrimination;

24 (C) high operating costs; and

1 (D) inapplicability of standard under-
2 writing criteria;

3 (4) provide mortgage underwriting assistance
4 (but not in originating loans) under contract to Na-
5 tive American financial institutions;

6 (5) work with the Federal National Mortgage
7 Association, the Federal Home Loan Mortgage Cor-
8 poration, and other participants in the secondary
9 market for home mortgage instruments in identi-
10 fying and eliminating barriers to the purchase of
11 Native American mortgage loans originated by Na-
12 tive American financial institutions and other lend-
13 ers in Native American communities;

14 (6) obtain capital investments in the Corpora-
15 tion from Indian tribes, Native American organiza-
16 tions, and other entities;

17 (7) act as an information clearinghouse by pro-
18 viding information on financial practices to Native
19 American financial institutions;

20 (8) monitor and report to Congress on the per-
21 formance of Native American financial institutions
22 in meeting the economic development and housing
23 credit needs of Native Americans; and

24 (9) provide any of the services described in this
25 section—

1 (A) directly; or

2 (B) under a contract authorizing another
3 national or regional Native American financial
4 services provider to assist the Corporation in
5 carrying out the purposes of this Act.

6 **SEC. 103. NATIVE AMERICAN LENDING SERVICES GRANT.**

7 (a) INITIAL GRANT PAYMENT.—If the Secretary and
8 the Corporation enter into a cooperative agreement for the
9 Corporation to provide technical assistance and other serv-
10 ices to Native American financial institutions, the agree-
11 ment shall, to the extent that funds are available as pro-
12 vided in this Act, provide that the initial grant payment,
13 anticipated to be \$5,000,000, shall be made at the time
14 at which all members of the initial Board have been ap-
15 pointed under this Act.

16 (b) PAYMENT OF GRANT BALANCE.—The payment
17 of the remainder of the grant shall be made to the Cor-
18 poration not later than 1 year after the date on which
19 the initial grant payment is made under subsection (a).

20 **SEC. 104. AUDITS.**

21 (a) INDEPENDENT AUDITS.—

22 (1) IN GENERAL.—The Corporation shall have
23 an annual independent audit made of the financial
24 statements of the Corporation by an independent

1 public accountant in accordance with generally ac-
2 cepted auditing standards.

3 (2) DETERMINATIONS.—In conducting an audit
4 under this subsection, the independent public ac-
5 countant shall determine and submit to the Sec-
6 retary a report on whether the financial statements
7 of the Corporation—

8 (A) are presented fairly in accordance with
9 generally accepted accounting principles; and

10 (B) to the extent determined necessary by
11 the Secretary, comply with any disclosure re-
12 quirements imposed under section 301.

13 (b) GAO AUDITS.—

14 (1) IN GENERAL.—Beginning on the date that
15 is 2 years after the date of commencement of oper-
16 ation of the Corporation, unless an earlier date is re-
17 quired by any other law, grant, or agreement, the
18 programs, activities, receipts, expenditures, and fi-
19 nancial transactions of the Corporation shall be sub-
20 ject to audit by the Comptroller General of the
21 United States under such rules and regulations as
22 may be prescribed by the Comptroller General.

23 (2) ACCESS.—To carry out this subsection, the
24 representatives of the General Accounting Office
25 shall—

1 (A) have access to all books, accounts, fi-
2 nancial records, reports, files, and all other pa-
3 pers, things, or property belonging to or in use
4 by the Corporation that are necessary to facili-
5 tate the audit;

6 (B) be afforded full facilities for verifying
7 transactions with the balances or securities held
8 by depositaries, fiscal agents, and custodians;
9 and

10 (C) have access, on request to the Corpora-
11 tion or any auditor for an audit of the Corpora-
12 tion under subsection (a), to any books, ac-
13 counts, financial records, reports, files, or other
14 papers, or property belonging to or in use by
15 the Corporation and used in any such audit and
16 to any papers, records, files, and reports of the
17 auditor used in such an audit.

18 (3) REPORTS.—The Comptroller General of the
19 United States shall submit to Congress a report on
20 each audit conducted under this subsection.

21 (4) REIMBURSEMENT.—The Corporation shall
22 reimburse the General Accounting Office for the full
23 cost of any audit conducted under this subsection.

1 **SEC. 105. ANNUAL HOUSING AND ECONOMIC DEVELOP-**
 2 **MENT REPORTS.**

3 Not later than 1 year after the date of enactment
 4 of this Act, and annually thereafter, the Corporation shall
 5 collect, maintain, and provide to the Secretary, in a form
 6 determined by the Secretary, such data as the Secretary
 7 determines to be appropriate with respect to the activities
 8 of the Corporation relating to economic development.

9 **SEC. 106. ADVISORY COUNCIL.**

10 (a) ESTABLISHMENT.—The Board shall establish an
 11 Advisory Council in accordance with this section.

12 (b) MEMBERSHIP.—

13 (1) IN GENERAL.—The Council shall consist of
 14 13 members, who shall be appointed by the Board,
 15 including—

16 (A) 1 representative from each of the 12
 17 districts established by the Bureau of Indian
 18 Affairs; and

19 (B) 1 representative from the State of Ha-
 20 waii.

21 (2) QUALIFICATIONS.—Of the members of the
 22 Council—

23 (A) not less than 6 members shall have ex-
 24 pertise in financial matters; and

25 (B) not less than 9 members shall be Na-
 26 tive Americans.

1 (3) TERMS.—Each member of the Council shall
 2 be appointed for a 4-year term, except that the ini-
 3 tial Council shall be appointed, as designated by the
 4 Board at the time of appointment, as follows:

5 (A) Each of 4 members shall be appointed
 6 for a 2-year term.

7 (B) Each of 4 members shall be appointed
 8 for a 3-year term.

9 (C) Each of 5 members shall be appointed
 10 for a 4-year term.

11 (c) DUTIES.—The Council shall—

12 (1) advise the Board on all policy matters of
 13 the Corporation; and

14 (2) through the regional representation of mem-
 15 bers of the Council, provide information to the
 16 Board from all sectors of the Native American com-
 17 munity.

18 **TITLE II—CAPITALIZATION OF** 19 **CORPORATION**

20 **SEC. 201. CAPITALIZATION OF THE CORPORATION.**

21 (a) CLASS A STOCK.—The class A stock of the Cor-
 22 poration shall—

23 (1) be issued only to Indian tribes and the De-
 24 partment of Hawaiian Home Lands;

25 (2) be allocated—

1 (A) with respect to Indian tribes, on the
 2 basis of Indian tribe population, as determined
 3 by the Secretary in consultation with the Sec-
 4 retary of the Interior, in such manner as to
 5 issue 1 share for each member of an Indian
 6 tribe; and

7 (B) with respect to the Department of Ha-
 8 waiian Home Lands, on the basis of the num-
 9 ber of current leases at the time of allocation;

10 (3) have such par value and other characteris-
 11 tics as the Corporation shall provide;

12 (4) be issued in such a manner as to ensure
 13 that voting rights may be vested only on purchase
 14 of those rights from the Corporation by an Indian
 15 tribe or the Department of Hawaiian Home Lands,
 16 with each share being entitled to 1 vote; and

17 (5) be nontransferable.

18 (b) CLASS B STOCK.—

19 (1) IN GENERAL.—The Corporation may issue
 20 class B stock evidencing capital contributions in the
 21 manner and amount, and subject to any limitations
 22 on concentration of ownership, as may be established
 23 by the Corporation.

24 (2) CHARACTERISTICS.—Any class B stock
 25 issued under paragraph (1) shall—

1 (A) be available for purchase by investors;

2 (B) be entitled to such dividends as may
3 be declared by the Board in accordance with
4 subsection (c);

5 (C) have such par value and other charac-
6 teristics as the Corporation shall provide;

7 (D) be vested with voting rights, with each
8 share being entitled to 1 vote; and

9 (E) be transferable only on the books of
10 the Corporation.

11 (c) CHARGES AND FEES; EARNINGS.—

12 (1) CHARGES AND FEES.—The Corporation
13 may impose charges or fees, which may be regarded
14 as elements of pricing, with the objectives that—

15 (A) all costs and expenses of the oper-
16 ations of the Corporation should be within the
17 income of the Corporation derived from such
18 operations; and

19 (B) those operations would be fully self-
20 supporting.

21 (2) EARNINGS.—

22 (A) IN GENERAL.—All earnings from the
23 operations of the Corporation shall be annually
24 transferred to the general surplus account of
25 the Corporation.

1 (B) TRANSFER OF GENERAL SURPLUS
2 FUNDS.—At any time, funds in the general sur-
3 plus account may, in the discretion of the
4 Board, be transferred to the reserves of the
5 Corporation.

6 (d) CAPITAL DISTRIBUTIONS.—

7 (1) DISTRIBUTIONS.—

8 (A) IN GENERAL.—Except as provided in
9 paragraph (2), the Corporation may make such
10 capital distributions as may be declared by the
11 Board.

12 (B) CHARGING OF DISTRIBUTIONS.—All
13 capital distributions under subparagraph (A)
14 shall be charged against the general surplus ac-
15 count of the Corporation.

16 (2) RESTRICTION.—The Corporation may not
17 make any capital distribution that would decrease
18 the total capital of the Corporation to an amount
19 less than the capital level for the Corporation estab-
20 lished under section 301, without prior written ap-
21 proval of the distribution by the Secretary.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

SEC. 301. REGULATION, EXAMINATION, AND REPORTS.

(a) IN GENERAL.—The Corporation shall be subject to the regulatory authority of the Department of Housing and Urban Development with respect to all matters relating to the financial safety and soundness of the Corporation.

(b) DUTY OF SECRETARY.—The Secretary shall ensure that the Corporation is adequately capitalized and operating safely as a congressionally chartered body corporate.

(c) REPORTS TO SECRETARY.—

(1) ANNUAL REPORTS.—On such date as the Secretary shall require, but not later than 1 year after the date of enactment of this Act, and annually thereafter, the Corporation shall submit to the Secretary a report in such form and containing such information with respect to the financial condition and operations of the Corporation as the Secretary shall require.

(2) CONTENTS OF REPORTS.—Each report submitted under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer of the Corporation designated by

1 the Board to make the declaration, that the report
 2 is true and correct to the best of the knowledge and
 3 belief of that officer.

4 **SEC. 302. AUTHORITY OF THE SECRETARY OF HOUSING**
 5 **AND URBAN DEVELOPMENT.**

6 The Secretary shall—

7 (1) have general regulatory power over the Cor-
 8 poration; and

9 (2) promulgate such rules and regulations ap-
 10 plicable to the Corporation as the Secretary deter-
 11 mines to be appropriate to ensure that the purposes
 12 specified in section 3 are accomplished.

13 **TITLE IV—FORMATION OF NEW**
 14 **CORPORATION**

15 **SEC. 401. FORMATION OF NEW CORPORATION.**

16 (a) IN GENERAL.—In order to continue the accom-
 17 plishment of the purposes specified in section 3 beyond
 18 the terms of the charter of the Corporation, the Board
 19 shall, not later than 10 years after the date of enactment
 20 of this Act, cause the formation of a new corporation
 21 under the laws of any tribe, any State, or the District of
 22 Columbia.

23 (b) POWERS OF NEW CORPORATION NOT PRE-
 24 SCRIBED.—Except as provided in this section, the new
 25 corporation may have such corporate powers and at-

1 tributes permitted under the laws of the jurisdiction of in
 2 which the new corporation is incorporated as the Board
 3 determines to be appropriate.

4 (c) USE OF NAME PROHIBITED.—The new corpora-
 5 tion may not use in any manner the names “Native Amer-
 6 ican Capital Development Corporation” or “NACDCO”,
 7 or any variation of those names.

8 **SEC. 402. ADOPTION AND APPROVAL OF MERGER PLAN.**

9 (a) IN GENERAL.—Not later than 10 years after the
 10 date of enactment of this Act, after consultation with the
 11 Indian tribes that are stockholders of class A stock re-
 12 ferred to in section 201(a), the Board shall prepare, adopt,
 13 and submit to the Secretary for approval, a plan for merg-
 14 ing the Corporation into the new corporation.

15 (b) DESIGNATED MERGER DATE.—

16 (1) IN GENERAL.—The Board shall establish
 17 the designated merger date in the merger plan as a
 18 specific calendar date on which, and time of day at
 19 which, the merger of the Corporation into the new
 20 corporation shall take effect.

21 (2) CHANGES.—The Board may change the
 22 designated merger date in the merger plan by adopt-
 23 ing an amended plan of merger.

24 (3) RESTRICTION.—Except as provided in para-
 25 graph (4), the designated merger date in the merger

1 plan or any amended merger plan shall not be later
2 than 11 years after the date of enactment of this
3 Act.

4 (4) EXCEPTION.—Subject to the restriction
5 contained in paragraph (5), the Board may adopt an
6 amended plan of merger that designates a date
7 under paragraph (3) that is later than 11 years
8 after the date of enactment of this Act if the Board
9 submits to the Secretary a report—

10 (A) stating that an orderly merger of the
11 Corporation into the new corporation is not fea-
12 sible before the latest date designated by the
13 Board;

14 (B) explaining why an orderly merger of
15 the Corporation into the new corporation is not
16 feasible before the latest date designated by the
17 Board;

18 (C) describing the steps that have been
19 taken to consummate an orderly merger of the
20 Corporation into the new corporation not later
21 than 11 years after the date of enactment of
22 this Act; and

23 (D) describing the steps that will be taken
24 to consummate an orderly and timely merger of
25 the Corporation into the new corporation.

1 (5) LIMITATION.—The date designated by the
 2 Board in an amended merger plan shall not be later
 3 than 12 years after the date of enactment of this
 4 Act.

5 (6) CONSUMMATION OF MERGER.—The con-
 6 summation of an orderly and timely merger of the
 7 Corporation into the new corporation shall not occur
 8 later than 13 years after the date of enactment of
 9 this Act.

10 (c) GOVERNMENTAL APPROVALS OF MERGER PLAN
 11 REQUIRED.—The merger plan or any amended merger
 12 plan shall take effect on the date on which the plan is
 13 approved by the Secretary.

14 (d) REVISION OF DISAPPROVED MERGER PLAN RE-
 15 QUIRED.—If the Secretary disapproves the merger plan or
 16 any amended merger plan—

17 (1) the Secretary shall—

18 (A) notify the Corporation of the dis-
 19 approval; and

20 (B) indicate the reasons for the dis-
 21 approval; and

22 (2) not later than 30 days after the date of no-
 23 tification of disapproval under paragraph (1), the
 24 Corporation shall submit to the Secretary for ap-
 25 proval, an amended merger plan that responds to

1 the reasons for the disapproval indicated in that no-
2 tification.

3 (e) NO STOCKHOLDER APPROVAL OF MERGER PLAN
4 REQUIRED.—The approval or consent of the stockholders
5 of the Corporation shall not be required to accomplish the
6 merger of the Corporation into the new corporation.

7 **SEC. 403. CONSUMMATION OF MERGER.**

8 The Board shall ensure that the merger of the Cor-
9 poration into the new corporation is accomplished in ac-
10 cordance with—

11 (1) a merger plan approved by the Secretary
12 under section 402; and

13 (2) all applicable laws of the jurisdiction in
14 which the new corporation is incorporated.

15 **SEC. 404. TRANSITION.**

16 Except as provided in this section, the Corporation
17 shall, during the transition period, continue to have all of
18 the rights, privileges, duties, and obligations, and shall be
19 subject to all of the limitations and restrictions, set forth
20 in this Act.

21 **SEC. 405. EFFECT OF MERGER.**

22 (a) TRANSFER OF ASSETS AND LIABILITIES.—On
23 the designated merger date—

24 (1) all real, personal, and mixed property, all
25 debts due on any account, and any other interest, of

1 or belonging to or due to the Corporation, shall be
 2 transferred to and vested in the new corporation
 3 without further act or deed; and

4 (2) no title to any real, personal, or mixed prop-
 5 erty shall be impaired in any way by reason of the
 6 merger.

7 (b) TERMINATION OF THE CORPORATION AND FED-
 8 ERAL CHARTER.—On the designated merger date—

9 (1) the surviving corporation of the merger
 10 shall be the new corporation;

11 (2) the Federal charter of the Corporation shall
 12 terminate; and

13 (3) the separate existence of the Corporation
 14 shall terminate.

15 (c) REFERENCES TO THE CORPORATION IN LAW.—
 16 After the designated merger date, any reference to the
 17 Corporation in any law or regulation shall be deemed to
 18 refer to the new corporation.

19 (d) SAVINGS CLAUSE.—

20 (1) PROCEEDINGS.—The merger of the Cor-
 21 poration into the new corporation shall not abate
 22 any proceeding commenced by or against the Cor-
 23 poration before the designated merger date, except
 24 that the new corporation shall be substituted for the

Corporation as a party to any such proceeding as of the designated merger date.

(2) CONTRACTS AND AGREEMENTS.—All contracts and agreements to which the Corporation is a party and which are in effect on the day before the designated merger date shall continue in effect according to their terms, except that the new corporation shall be substituted for the Corporation as a party to those contracts and agreements as of the designated merger date.

TITLE V—OTHER NATIVE AMERICAN FUNDS

SEC. 501. NATIVE AMERICAN ECONOMIES DIAGNOSTIC STUDIES FUND.

(a) ESTABLISHMENT.—There is established within the Corporation a fund to be known as the “Native American Economies Diagnostic Studies Fund” (referred to in this section as the “Diagnostic Fund”), to be used to strengthen Indian tribal economies by supporting investment policy reforms and technical assistance to eligible Indian tribes, consisting of—

(1) any interest earned on investment of amounts in the Fund under subsection (d); and

(2) such amounts as are appropriated to the Diagnostic Fund under subsection (f).

1 (b) USE OF AMOUNTS FROM DIAGNOSTIC FUND.—

2 (1) IN GENERAL.—The Corporation shall use
3 amounts in the Diagnostic Fund to establish an
4 interdisciplinary mechanism by which the Corpora-
5 tion and interested Indian tribes may jointly—

6 (A) conduct diagnostic studies of Native
7 economic conditions; and

8 (B) provide recommendations for reforms
9 in the policy, legal, regulatory, and investment
10 areas and general economic environment of the
11 interested Indian tribes.

12 (2) CONDITIONS FOR STUDIES.—A diagnostic
13 study conducted jointly by the Corporation and an
14 Indian tribe under paragraph (1)—

15 (A) shall be conducted in accordance with
16 an agreement between the Corporation and the
17 Indian tribe; and

18 (B) at a minimum, shall identify inhibitors
19 to greater levels of private sector investment
20 and job creation with respect to the Indian
21 tribe.

22 (c) EXPENDITURES FROM DIAGNOSTIC FUND.—

23 (1) IN GENERAL.—Subject to paragraph (2), on
24 request by the Corporation, the Secretary of the
25 Treasury shall transfer from the Diagnostic Fund to

1 the Corporation such amounts as the Corporation
 2 determines are necessary to carry out this section.

3 (2) ADMINISTRATIVE EXPENSES.—An amount
 4 not exceeding 12 percent of the amounts in the Di-
 5 agnostic Fund shall be available in each fiscal year
 6 to pay the administrative expenses necessary to
 7 carry out this section.

8 (d) INVESTMENT OF AMOUNTS.—

9 (1) IN GENERAL.—The Secretary of the Treas-
 10 ury shall invest such portion of the Diagnostic Fund
 11 as is not, in the judgment of the Secretary of the
 12 Treasury, required to meet current withdrawals. In-
 13 vestments may be made only in interest-bearing obli-
 14 gations of the United States.

15 (2) ACQUISITION OF OBLIGATIONS.—For the
 16 purpose of investments under paragraph (1), obliga-
 17 tions may be acquired—

18 (A) on original issue at the issue price; or

19 (B) by purchase of outstanding obligations
 20 at the market price.

21 (3) SALE OF OBLIGATIONS.—Any obligation ac-
 22 quired by the Diagnostic Fund may be sold by the
 23 Secretary of the Treasury at the market price.

24 (4) CREDITS TO FUND.—The interest on, and
 25 the proceeds from the sale or redemption of, any ob-

1 ligations held in the Diagnostic Fund shall be cred-
 2 ited to and form a part of the Diagnostic Fund.

3 (e) TRANSFERS OF AMOUNTS.—

4 (1) IN GENERAL.—The amounts required to be
 5 transferred to the Diagnostic Fund under this sec-
 6 tion shall be transferred at least monthly from the
 7 general fund of the Treasury to the Diagnostic Fund
 8 on the basis of estimates made by the Secretary of
 9 the Treasury.

10 (2) ADJUSTMENTS.—Proper adjustment shall
 11 be made in amounts subsequently transferred to the
 12 extent prior estimates were in excess of or less than
 13 the amounts required to be transferred.

14 (f) TRANSFERS TO DIAGNOSTIC FUND.—There are
 15 appropriated to the Diagnostic Fund, out of funds made
 16 available under section 603, such sums as are necessary
 17 to carry out this section.

18 **SEC. 502. NATIVE AMERICAN ECONOMIC INCUBATION CEN-**
 19 **TER FUND.**

20 (a) ESTABLISHMENT.—There is established within
 21 the Corporation a fund to be known as the “Native Amer-
 22 ican Economic Incubation Center Fund” (referred to in
 23 this section as the “Economic Fund”), consisting of—

1 (1) any interest earned on investment of
2 amounts in the Economic Fund under subsection
3 (d); and

4 (2) such amounts as are appropriated to the
5 Economic Fund under subsection (f).

6 (b) USE OF AMOUNTS FROM ECONOMIC FUND.—

7 (1) IN GENERAL.—The Corporation shall use
8 amounts in the Economic Fund to ensure that Fed-
9 eral development assistance and other resources
10 dedicated to Native American economic development
11 are provided only to Native American communities
12 with demonstrated commitments to—

13 (A) sound economic and political policies;

14 (B) good governance; and

15 (C) practices that promote increased levels
16 of economic growth and job creation.

17 (c) EXPENDITURES FROM ECONOMIC FUND.—

18 (1) IN GENERAL.—Subject to paragraph (2), on
19 request by the Corporation, the Secretary of the
20 Treasury shall transfer from the Economic Fund to
21 the Corporation such amounts as the Corporation
22 determines are necessary to carry out this section.

23 (2) ADMINISTRATIVE EXPENSES.—An amount
24 not exceeding 12 percent of the amounts in the Eco-
25 nomic Fund shall be available in each fiscal year to

1 pay the administrative expenses necessary to carry
2 out this section.

3 (d) INVESTMENT OF AMOUNTS.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury shall invest such portion of the Economic Fund
6 as is not, in the judgment of the Secretary of the
7 Treasury, required to meet current withdrawals. In-
8 vestments may be made only in interest-bearing obli-
9 gations of the United States.

10 (2) ACQUISITION OF OBLIGATIONS.—For the
11 purpose of investments under paragraph (1), obliga-
12 tions may be acquired—

13 (A) on original issue at the issue price; or

14 (B) by purchase of outstanding obligations
15 at the market price.

16 (3) SALE OF OBLIGATIONS.—Any obligation ac-
17 quired by the Economic Fund may be sold by the
18 Secretary of the Treasury at the market price.

19 (4) CREDITS TO FUND.—The interest on, and
20 the proceeds from the sale or redemption of, any ob-
21 ligations held in the Economic Fund shall be cred-
22 ited to and form a part of the Economic Fund.

23 (e) TRANSFERS OF AMOUNTS.—

24 (1) IN GENERAL.—The amounts required to be
25 transferred to the Economic Fund under this section

1 shall be transferred at least monthly from the gen-
 2 eral fund of the Treasury to the Economic Fund on
 3 the basis of estimates made by the Secretary of the
 4 Treasury.

5 (2) ADJUSTMENTS.—Proper adjustment shall
 6 be made in amounts subsequently transferred to the
 7 extent prior estimates were in excess of or less than
 8 the amounts required to be transferred.

9 (f) TRANSFERS TO ECONOMIC FUND.—There are ap-
 10 propriated to the Economic Fund, out of funds made
 11 available under section 603, such sums as are necessary
 12 to carry out this section.

13 **TITLE VI—AUTHORIZATIONS OF** 14 **APPROPRIATIONS**

15 **SEC. 601. NATIVE AMERICAN FINANCIAL INSTITUTIONS.**

16 (a) IN GENERAL.—There are authorized to be appro-
 17 priated to the Fund, without fiscal year limitation, such
 18 sums as are necessary to provide financial assistance to
 19 Native American financial institutions.

20 (b) NO CONSIDERATION AS MATCHING FUNDS.—To
 21 the extent that a Native American financial institution re-
 22 ceives funds under subsection (a), the funds shall not be
 23 considered to be matching funds required under section
 24 108(e) of the Riegle Community Development and Regu-
 25 latory Improvement Act of 1994 (12 U.S.C. 4707(e)).

1 **SEC. 602. CORPORATION.**

2 There are authorized to be appropriated to the Sec-
3 retary, for transfer to the Corporation, such sums as are
4 necessary to carry out activities of the Corporation.

5 **SEC. 603. OTHER NATIVE AMERICAN FUNDS.**

6 There are authorized to be appropriated such sums
7 as are necessary to carry out sections 501 and 502.

